

## REMARKS

The enclosed is responsive to the Examiner's Office Action mailed on April 29, 2009. At the time the Examiner mailed the Office Action, claims 1-3, 5, 9, 11-13, 15, 18, 19, 21, 23-31, 33, 35-38, 40-43 and 45-52 were pending. Claims 29-31, 33, 35-38, 40-43, 45, 46 and 49-52 have been withdrawn. By way of the present response applicants have: 1) amended claims 1-3, 5, 9, 11, 15, 18-19, 21, 23-26, and 28; 2) added no claims; and 3) canceled claims 27 and 47-48.

Applicants have amended the claims to more clearly recite the claimed subject matter. Support for the amendments is found in the specification as originally filed, for example, at least on page 8, line 20, and page 11, lines 16-24. No new matter has been added.

Reconsideration of this application as amended is respectfully requested.

## Claim Objections

The Office Action objected to claim 19 and requested that "the ohmic contact layer" be replaced with "the second ohmic contact layer." Applicants have amended claim 19 as suggested. Accordingly, applicants request withdrawal of the objection to claim 19.

## Claim Rejections – 35 U.S.C. §102

Claims 1-3, 9, 11-13, 15, 18, 19, 21, 23-26, and 28 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S Patent No. 6,649,437 by Yang et al., (hereinafter "Yang").

Yang describes a method of manufacturing a LED. Applicants do not admit that Yang is prior art and reserve the right to swear behind Yang at a later date.

Applicants submit that Yang fails to disclose the following limitation of amended claim 1:

forming a first ohmic contact layer on a first surface of the multiple epitaxial layers, the first surface being remote from the substrate, the first ohmic contact layer comprising multiple metal layers and being a mirror.

(Amended claim 1).

Yang fails to disclose that a first ohmic contact layer is a mirror. In contrast, Yang discloses “the Ohmic contact metal 40 **absorbs light.**” (Yang, col. 2, lines 53-54) (emphasis added). Furthermore, Yang fails to disclose a first ohmic contact layer comprising multiple metal layers. Yang only refers to an Ohmic contact metal, without any description of multiple layers.

Accordingly, applicants respectfully submit that the rejection of claim 1 has been overcome.

Given that claims 2-3, 9, 11-13, 15, 18, 19, 21, 23-26, and 28 are dependent upon claim 1, and include additional features, applicants respectfully submit that the rejection of claims 2-3, 9, 11-13, 15, 18, 19, 21, 23-26, and 28 has been overcome for at least the reasons set forth above.

#### Claim Rejections – 35 U.S.C. §103

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Yang. The Office Action alleges that a height in the range 15 to 500 micrometers, a thickness in the range 3 to 500 micrometers, and a spacing in the range of 200 to 2,000 microns would be obvious in light of Yang. In particular, the Office Action

cites MPEP §2144.05 and *In re Woodruff*. Applicants respectfully disagree with the Office Action's assertion and interpretation of MPEP §2144.05 and *In re Woodruff*. The MPEP §2144.05 in its citation of *In re Woodruff* states “[i]n the case where the **claimed ranges ‘overlap or lie inside ranges disclosed by the prior art’** a prima facie case of obviousness exists.” (emphasis added). In contrast to the situation cited, Yang does not disclose a range and, therefore, there is no overlap of ranges between Yang and claim 5. The Office Action's statement that applicants must show that the chosen dimensions are critical is not correctly applied. A showing of the criticality of the claimed range is used to “rebut a prima facie case of **obviousness based on overlapping ranges.**” (MPEP §2144.05 III) (emphasis added).

Furthermore, Claim 5 is dependent upon claim 1, and includes additional features. Accordingly, applicants submit that the rejection of claim 5 has been overcome for at least the reasons set forth above.

## CONCLUSION

Applicants respectfully submit that in view of the amendments and arguments set forth herein, the applicable objections and rejections have been overcome.

Applicants reserve all rights under the doctrine of equivalents.

Pursuant to 37 C.F.R. 1.136(a)(3), applicants hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

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